Supreme Court, U.S.
FILED

94 497 MAY 24 1994

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ELWYN EDMUND VAUGHAN PETITIONER

vs.

WILLIAM L. BENEDICT
SCOTT J. LEARNED, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ELWYN EDMUND VAUGHAN PRO SE
2520 WEST HILL ROAD "A"
ELMIRA, NEW YORK 14903
607 732-3090

39 pp

QUESTION PRESENTED

1. Does the individual's constitutional rights under Amendment IV of the Constitution, begin with the warrantless forcible entry into that individual's house by armed sheriff's deputies as specifically detailed in MAPP V. OHIO, 367 U.S. 643? Then months later with the complete disregard of MIRANDA V. ARIZONA, 384 U.S. 346, and BRADY V. MARYLAND, 373 U.S. 83, with the provisions of Amendment VI stating that the accused shall enjoy the right to a speedy trial; a time span that now encompasses five years, is this the constitutional guarantee referred to in Amendment XIV under due process of law and the equal protection of the laws?

THE PARTIES

The parties set forth in the caption were the parties in the lower courts and are the only parties in this proceeding.

There are no parent companies or subsidiaries.

TABLE OF CONTENTS PAGE

INDEX TO APPENDICES iii

OPINIONS BELOW 1

TABLE OF AUTHORITIES 2

JURISDICTION 3

STATEMENT OF THE CASE 4

CONCLUSION 10

APPENDIX A: OPINION AND ORDER A-1
OF THE UNITED STATES
DISTRICT COURT
WESTERN DISTRICT
OF NEW YORK 92-CV-6266L

APPENDIX B: OPINION AND ORDER B-13
OF THE UNITED STATES
COURT OF APPEALS FOR
THE SECOND CIRCUIT
93-7765

APPENDIX C: CRIMINAL INFORMATION C-20
FILED AGAINST PETITIONER
CHEMUNG COUNTY CASE
#89-5353

OPINIONS BELOW

A copy of the Opinion and Order of the United States District Court Western District of New York 92-CV-6266L dismissing the petitioner's complaint is attached at Appendix A and a copy of the Opinion and Order of the United States Court of Appeals for the Second Circuit 93-7765 dismissing the petitioner's complaint is attached at Appendix B.

TABLE OF AUTHORITIES

CASES	PAGE
Mapp v Ohio, 367 U.S. 643	5
Miranda v Arizona, 384 U.S. 346	5
Brady v Maryland, 373 U.S. 83	6
Metallhandel v Hyman-Michaels Co. 7 AD2D 840	7

CONSTITUTION

U.S. Constitution Amendment IV	3
U.S. Constitution Amendment V	3
U.S. Constitution Amendment VI	3
U.S. Constitution Amendment XIV	3

JURISDICTION

The plaintiff-appellant-petitioner, Elwyn Edmund Vaughan, filed the required number of Briefs dated September 20, 1993, with the United States Court of Appeals Second Circuit. This plaintiff never heard from the Court until after April 25, 1994, which document claims to have been heard on March 31, 1994, and this plaintiff was denied the opportunity of oral argument or a petition for re-hearing. The Court's jurisdiction is invoked under Title 28, U.S.C. Section 1254 (1).

Constitutional and statutory provisions include Amendments IV, V, VI and XIV of the Constitution, as set forth throughout this petitioner's statement.

The Court's jurisdiction is involved under the provisions noted above.

STATEMENT OF THE CASE

The United States District Court for the Western District of New York had jurisdiction pursuant to 28 U.S.C. Section 1343 (a) (1), (2), and (3).

On July 4, 1988, the Sheriff's Department of Chemung County, New York, was informed of the damages inflicted on this plaintiff's inherited farm caused by the deliberate invasion of bulldozers from the adjacent construction of defendant William L. Benedict. A 300 foot section of the pasture fence was completely bulldozed out of existence. Tons of silt and construction material have been deposited on the Vaughan farm from the uncontrolled flood waters emanating from the construction site.

Between the above date, July 4, 1988, defendant William L. Benedict and personnel of the Chemung County Sheriff's Department conspired to cover up the damages to the Vaughan farm culminating in the events of

June 22, 1989. On June 22, 1989 armed deputies from the Chemung County Sheriff's Department forcibly entered this plaintiff's house, MAPP V. OHIO, 367 U.S. 642, without a search warrant as is required by Amendment IV of the U.S. Constitution and the requirements of MIRANDA V. ARIZONA, 384 U.S. 346, nor Amendment V of the U.S. Constitution, since this plaintiff was in his own house and in bed. Some four months later on or about October 31, 1989, this plaintiff was arrested in his own house, for an alleged activity in the month of May 1989, as evidenced by Exhibit A(1), dated October 18, 1989 and signed by defendant William L. Benedict under penalty of perjury which is contrasted with his sworn statement also under penalty of perjur dated January 29, 1993, Appendix C. Further in the complaint filed 6/19/92 and listed as 01, in the INDEX TO RECORD ON APPEAL at Exhibit C-4 is the Arrest Report signed by

the Arresting Officer, J. Michael Mucci, Case #89-5353.

In accordance with Amendment VI of the U.S. Constitution and the requirements under BRADY V. MARYLAND, 373 U.S. 83, this plaintiff's counsel demanded the evidence and trial by jury as provided for in Amendment VI of the U.S. Constitution. In the over five years since May 1989, no evidence has ever been provided this plaintiff or a trial ever held. Does this meetthe requirements of Amendment XIV of the U.S. Constitution, due process of law and the equal protection of the laws?

Defendant Scott J. Learned, entered the conspiracy by numerous perjurious statements and documents, among them a letter to the attorney-of-record dated August 9, 1989, some two months before the arrest.

On June 18, 1992 this plaintiff

filed suit in the United States District Court for the Western District of New York against the defendants William L. Benedict and Scott J. Learned, which was within the required time limits.

On February 11, 1993, Judge Larimer called my home in an alleged conference call apparently arranged by defendant Scott J. Learned. Judge Larimer stated that a Verbatim Transcript would be made and would become part of the Record. In the Index to Record on Appeal no entry appears. Investigative techniques indicate that this was a deliberate recruitment of a cover-up since the call does not conflict with METALLHANDEL V, HYMAN-MICHAELS CO. 7, AD2D 840. In letters dated August 9, 1989, July 8, 1992, and March 8, 1993, encompassed in a supposedly Motion listed as 09 Of the Index to Record on Appeal, defendant Scott J. Learned, amply demonstrates the recruit-

ment of a horde of conspirators, the names, dates and substance could only be known by the conspirators themselves.

The District Court deliberately covered up the evidence contained in the Exhibits A thru P of the stated cause of action contained in the complaint of this plaintiff filed with the District Court on June 18, 1992. The evidence clearly showed the step by step chronology of the conspiracy of these state actors with a horde of officials in the destruction of this plaintiff's inherited farm beginning in July 1988. Sec 1985 (2) as clearly enounced in the complaint was substituted by Sec 1985 (3) of 42 U.S.C. The District Court showed its bias and prejudice against this pro se litigant throughout its perverted decision.

The Appeals Court showed a continuation of cover-up and rubber-stamping

by baldly asserting that the case was argued, when in fact this pro se plaintiff has not worked since Jun 12, 1986 and has been bedridden.

Your Petitioner contends that he has been deprived of due process by the Courts below and submits that a review of the proceedings of the lower Courts will support the Petitioner's position that there was an ultimate cover-up of the underlying facts which has resulted in the loss of your Petitioner's Constitutional and Civil Rights under the Constitution and Laws of the United States.

CONCLUSION

For the reasons set forth above and throughout this petition, a writ of certiorari should issue to review all of the material that led to the Opinion and Order of the United States District Court Western District of New York 92-CV-6266L and the Opinion and Order of the United States Court of Appeals for the Second Circuit 93-7765.

The District Court in its decision perverted the Equal Protection of the Laws clause of the U.S. Constitution at Amendment XIV by deliberately covering-up the evidence as stated in the plaintiff's cause of action complaint, provisions 1 thru 22. The plaintiff's complaint clearly outlined the provisions of 42 U.S.C. Sec. 1985 (2). The District Court deliberately substituted Section (3), showing its bias and prejudice against this plaintiff.

The Second Circuit Appeals Court flaunted the U.S. Constitution, deliberately distorted the facts, rubberstamped the District Court's Decision, listed a U.S.C.J. whose name does not appear on the personnel of library publications. The Second Circuit baldly asserted that the case was argued. This plaintiff is disabled, has not worked since Jun 12, 1986, a span of 8 years.

The Americans With Disability Act mandates accommodation for the disabled. The Second Circuit does not accommodate the disabled. The Congressional Committees must be notified of this bald face lie and the denial of Equal Justice under law by these inferior courts to this disabled plaintiff-appellant-petitioner pro se.

Dated September 9, 1994

Respectfully submitted,

Elwyn Edmund Vaughan

ELWYN EDMUND VAUGHAN, Pro Se

UNITED STATES DISTRICT-COURT

WESTERN DISTRICT OF NEW YORK

ELWYN EDMUND VAUGHAN,

Plaintiff,

DECISION AND ORDER

v. 92-CV-6266L

WILLIAM L. BENEDICT and

SCOTT J. LEARNED,

Defendants

This is a pro se action brought under 42 U.S.C. $$ 1983 and 1985. Defendants, William L. Benedict and Scott J. Learned, have moved in the alternative to dismiss the complaint or for summary judgment. Plaintiff, Elwyn Edmund Vaughan, has cross-moved for summary judgment. For the reasons which follow defendants' motion for summary judgment is granted, and the complaint is dismissed; plaintiff's cross-motion for summary judgment is denied.

FACTS

This action stems from a property dispute between Vaughan and Benedict, who are neighbors. Although it is difficult to discern the substance of Vaughan's allegations, it appears that Benedict instituted a civil trespass action against Vaughan in state court, which eventually resulted in summary judgment in Benedict's favor in July 1990. Learned was Benedict's attorney in that action, as he is here.

In addition, the Chemung County District Attorney brought a misdemeanor criminal mischief charge against Vaughan in 1989 based in part on a written information filed by Benedict. That proceeding was stayed indefinitely due to Vaughan's ill health, and it does not appear from the record whether it has yet been resolved.[1]

In general, Vaughan seems to allege that Benedict and Learned committed

perjury in the state proceedings. Although he alleges that defendants violated his civil rights, the exact nature or manner of these violations is unclear. Many of the allegations are conclusory; some merely reference exhibits to the complaint with little or no explanation of how they show a constitutional violation. The gist of plaintiff's allegations, however, appears to be that the judgment against Vaughan in Benedict's state lawsuit resulted from defendants' alleged perjury in that action.

! This is not the first time this court has dealt with Vaughan's property disputes. Vaughan brought another civil rights action, Vaughan v. Mucci, 92-CV-6105L, against various defendants in connection with the 1989 prosecution arising out of his alleged entry onto Benedict's property. I granted summary judgment

for defendants in that case on June 30, 1992, and the Court of Appeals for the Second Circuit affirmed that decision on June 21, 1993. I also dismissed Vaughan's complaint in another action Vaughan v. Swartwood, 92-CV-6148L, which he brought against a judge and sheriff who were involved in 1986 state contempt proceedings against Vaughan as a result of his disobedience of a court order enjoining him from blocking a public road running across his property. That order, which was entered on June 22, 1992, is currently on appeal.

DISCUSSION

1. Claim Under 42 U.S.C. $1983

Defendants contend that the complaint fails to state a cause of action under 42 U.S.C. $1983 because it fails to allege state action on the part of defendants.

To proceed on this claim, plaintiff must show, inter alia, that he was deprived

of a right "secured by the Constitution and the laws" of the United States. Second, he must show that defendants deprived him of this right acting "under color of any statute" of the State of New York. Flagg Brothers, Inc v. Brooks, 436 U.S. 149, 155-56 (1978) (citing Adickes v. S. H. Kress & Co., 398 U.S. 144, 150 (1970)).

The latter element, commonly known as the "state action" component, stems from the statute's enactment pursuant to the authority of Congress to enforce the Fourteenth Amendment, which prevents states from violating the individual's constitutional rights. See Lee v. Patel, 564 F. Supp. 755, 757 (E.D.Va. 1983) (citing Rendell-Baker v. Kohn, 457 U.S. 830 (1982)). By virtue of the state action requirement, a §1983 plaintiff must prove that the action complained of is "fairly attributable to the state." Id.

Private parties may be found to have

acted under color of law if they conspired with state officials, i.e., that they "somehow reached an understanding" with state officials, or were "willing participant(s) in joint activity with the State or its agents." Adickes, 398 U.S. at 152; see also Colombrito v. Kelly, 764 F. 2d 122, 132 (2d Cir. 1985); Conway v. Village of Mount Kisco, 750. F.2d 205, 214 n.12 (2d Cir. 1984). Absent evidence of such a conspiracy or joint activity, however, no $1983 liability can attach to a private individual. Id.

In the instant case, I find that there is no evidence of state action. Essentially this is a property dispute between adjoining landowners that plaintiff is attempting to relitigate in federal court.

The fact that Benedict sought a remedy through civil litigation does not satisfy the state action requirement. Mere recourse to state or local court procedures does not by itself constitute joint activity with the

state to subject a private party to $1983, liability. See Dennis v. Sparks, 449 U.S. 24, 28 (1980); Hoai v. Vo, 935 F.2d 308, 313 (D.C. Cir. 1991), cert. denied, 112 S. Ct. 1578 (1992). There must be, at a minimum, some evidence of an understanding or agreed-upon plan between the private party and the state actor to violate the plaintiff's rights before $ 1983 liability can attach. See, e.g., Crabtree v. Muchmore, 904 F.2d 1475, 1476 (10th Cir. 1990). There is no evidence of that at all in this case.

The misdemeanor charges stemming from Benedict's complaints also do not show state action. It is uniformly recognized that a private party does not conspire or jointly act with a state actor simply by complaining to the police. See, e.g. , Collins v. Womancare, 878 F.2d 1145, 1155 (9th Cir. 1989, cert. denied, 493 U.S. 1056 (1990); Carey v. Continental Air-

lines, Inc., 823 F.2d, 1402, 1404 (10th Cir. 1987); Sims v Jefferson Downs Racing Ass'n, 778 F.2d 1068, 1078-79 (5th Cir. 1985).

Thus, a private person who is, or believes himself to be, the victim of a crime, does not becomes a state actor merely by swearing out an arrest warrant for a criminal suspect. Lee, 564 F.Supp. at 758-60. Even "providing false information to an arresting officer is not, by itself, sufficient to state a claim against that private party under $ 1983." Moore v. Marketplace Restaurant, Inc., 754 F2d 1336, 1352 (7th Cir. 1985); see also Arnold v. International Business Machines, 637 F.2d 1350, 1358-59 (9th Cir. 1981).

Besides the absence of state action, this claim suffers from several other defects as well. To the extent that plaintiff is pursuing a $ 1983 claim based upon false arrest, one of the requirements of that claim is that the plaintiff "es-

tablish the elements of the state law tort () of false arrest..." Reid v. City of New York, 736 F.Supp. 21, 24 (E.D.N.Y. 1990) (citing Raysor v. Port Authority of New York and New Jersey, 768 F.2d 34, 40 (2d Cir. 1985), cert. denied, 475 U.S. 1027 (1986). Those elements are that 1) a defendant intended to confine the plaintiff, 2) plaintiff was conscious of the confinement and did not consent to it, and 3) the confinement was not otherwise privileged." Id.

Here, there was no confinement of Vaughan. It appears that he was simply given an appearance ticket, and was never detained. Complaint Ex. D. Therefore, he cannot establish a $ 1983 claim under a false arrest theory.

Similarly, if plaintiff is asserting a $ 1983 claim based on malicious prosecution, the claim fails because plaintiff has neither alleged nor proved a necessary

element, i.e., that the criminal proceeding was terminated in his favor. White v. Frank, 855 F.2d 956, 959 n. 2 (2d Cir. 1988). The record shows only that the proceedings were suspended indefinitely.

2. Claim Under 42 U.S.C. $ 1985

Vaughan's $ 1985 claim is defective upon its face. "An action will lie under $ 1985(3) when a plaintiff is injured by a private conspiracy to interfere with his (or her) constitutional rights, so long as their is some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions.'" Jews for Jesus, Inc. v. Jewish Community Relations Council of N.Y., Inc., 968 F.2d 286, 290-91 (2d Cir. 1992), (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). This animus requirement prevents $ 1985(3) from being interpreted as providing a federal remedy for all

tortious conspiracies that interfere with the rights of others. Id. See Silkwood v. Kerr-McGee, 637 F.2d 743, 748 (10th Cir. 1980), cert. denied, 454 U.S. 833 (1981).

Plaintiff has made no allegations of any discriminatory race- or class-based animus. As stated earlier, this case is really about a boundary-line dispute between neighbors. The events surrounding that dispute are not actionable under § 1985(3). United Bhd. of Carpenters & Joiners, Local 610 v. Scott, 463 U.S. 825, 837 (1983).

CONCLUSION

For these reasons, then defendants' motion for summary judgment is granted, and plaintiff's cross-motion for summary judgment is denied. The complaint is dismissed with prejudice.

IT IS SO ORDERED.

S
DAVID G. LARIMER

UNITED STATES DISTRICT JUDGE

Dated: Rochester, New York

June 28, 1993

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the thirty-first day of March, one thousand nine hundred and ninety-four.

Present:

Honorable William H. Timbers,

Honorable Richard J. Cardamone,

Honorable Ralph K. Winter,

Circuit Judges

ELWYN EDMUND VAUGHAN,

Plaintiff-Appellant,

v. ORDER #93-7765

WILLIAM L. BENEDICT and SCOTT J. LEARNED,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record and was argued.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

Elwyn Edmund Vaughan appeals pro se from Judge Larimer's grant of appellees' motion for summary judgment dismissing Vaughan's complaint filed pursuant to 42 U.S.C. $$ 1983 and 1985 (1988). Vaughan alleges that appelles violated 42 U.S.C. $1983 by committing perjury in a state civil proceeding commenced by Benedict and by committing false arrest and wrongful prosecution. He also alleges that appellees' violated 42 U.S.C. $1985 by conspiring to deprive him of his constitutional rights. The district court granted appellees' motion for summary judgment, concluding that Vaughan had failed to establish state action on the

part of the appellees, as required by 42 U.S.C. $1983, and had failed to allege discriminatory animus, as required by 42 U.S.C. $1985 (3). Summary judgment is properly granted where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). We conclude that the district court correctly granted summary judgment.

Section 1983 creates a federal action for citizens who are deprived of their constitutional rights by persons acting under color of state law. 42 U.S.C. $1983. Vaughan, however, has not demonstrated that appellees engaged in any state action. Neither a plaintiff nor his lawyer is a state actor by virtue of participation in civil litigation, absent narrow circumstances not present here. See Dahlberg v. Becker, 748 F. 2d 85, 89-93 (2d Cir. 1984) (private litigants

and their lawyers not state actors absent pre-judgment attachment proceeding or affirmative state support of constitutional deprivation), cert. denied, 470 U.S. 1084 (1985). Thus neither Benedict's nor his lawyer Learned's participation in a civil proceeding against Vaughan converted them into state actors.

Vaughan also fails to demonstrate that appellees acted under color of law by conspiring with state officials to violate Vaughan's constitutional rights. See Adickes v S. H. Kress & Co., 398 U.S. 144, 152 (1970). To establish such a conspiracy, Vaughan must show that the appellees and state officials were "willful participants in joint activity" to deprive Vaughan of his constitutional rights. Id. (internal quotation omitted). Vaughan alleges that a complaint by Benedict to the police led to his arrest and prosecution. However, this naked allegation does not demonstrate by

itself any agreement or understanding between Benedict and the police officers to deprive Vaughan of his constitutional rights. See id. The district court therefore properly granted summary judgment with respect to Vaughan's Section 1983 claim.

The district court also properly granted summary judgment with respect to Vaughan's Section 1985(3) claim. "(A)n action will lie under §1985(3) when a plaintiff is injured by a private conspiracy to interfere with his (or her) constitutional rights, so long as there is 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions.'" Jews for Jesus Inc. v. Jewish Community Relations Council of New York, Inc., 968 F. 2d 286, 290-91 (2d Cir. 1992) (internal quotation omitted.

Vaughan's complaint does not allege

any discriminatory animus behind appellees' alleged actions. In addition, although his brief on appeal baldly asserts that "(Chemung) county is politically and racially motivated against this plaintiff," such conclusory allegations are insufficient to withstand a motion for summary judgment. Wyler v. United States, 725 F. 2d 156, 160 (2d Cir. 1983; cf. Zemsky v. City of New York, 821 F.2d 148, 151 (2d Cir.) (complaint "containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss") (quoting Sommer v. Dixon, 709 F.2d 173, 175 (2d Cir.) (per curiam), cert. denied, 464 U.S. 857 (1983)), cert. denied, 484 U.S. 965 (1987).

To the extent that Vaughan's brief raises claims not initially presented to the district court, we decline to consider them. Kraebel v. New York City Dep't of

Hous. Preservation & Dev., 959 F. 2d 395, 401 (2d Cir.) ("We have repeatedly held that if an argument has not been raised before the district court, we will not consider it, and we adhere to that holding here.") (citations omitted, cert. denied, 113 S. Ct. 326 (1992). We have considered all of the other claims of the appellant and find them to lack merit.

We affirm.

S
Hon. William H. Timbers, U.S.C.J.

S
Hon. Richard J. Cardamone, U.S.C.J.

S
Hon. Ralph K. Winter, U.S.C.J.

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

STATE OF NEW YORK : COUNTY OF CHEMUNG

TOWN COURT : TOWN OF BIG FLATS

People of the State of New York

vs. Case #89-5353

ELWYN E. VAUGHAN

DOB 11/25/23 INFORMATION

I, WILLIAM L. BENEDICT, RD#3 Vanderhoff Rd. Big Flats, New York, by this written information makes written accusation as follows:

That ELWYN E. VAUGHN in the month of May, 1989, in the Town of Big Flats, County of Chemung, State of New York, did commit the offense of Criminal Mischief in the Fourth Degree, a Misdemeanor, in violation of Section 145.00 subdivision 1 of the Penal Law of the State of New York, in that he did, at the aforesaid time and place:

COUNT ONE: A person is guilty of Criminal Mischief in the Fourth Degree

when, having to right to do so, nor any reasonable ground to believe that he has such right, he intentionally damages property of another person.

The facts upon which this information is based are as follows:

That the said defendant, in the month of May 1989, did intentionally damage property of another, to wit; That the said defendant at the aforesaid place did intentionally, cause the destruction of several trees and shrubs in an area located off the Vanderhoff Rd. where the Benedict and Vaughn properties adjoin, in the Town of Big Flats, County of Chemung, State of New York.

Sources of your deponent's information and grounds for his belief is the attached sworn statement of Investigator J. Michael Mucci of the Chemung County Sheriff's Department, and sworn statement of Barlow

Rhodes attached hereto and made a part of. VERIFICATION BY SUBSCRIPTION AND NOTICE UNDER PENAL LAW SECTION 210.45 It is a crime, punishable as a Class A Misdemeanor under the laws of the State of New York, for a person, in and by a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true. Affirmed under penalty of perjury this 18th day of October, 1989.

S
William L. Benedict

4. To this day, I do not claim to have personal knowledge as to the person who trespassed upon my property and cut the trees and shrubs.

S
WILLIAM L. BENEDICT

Sworn to before me
this 29th day of January, 1993.

S
Pamela J. Mack

PAMELA J. MACK

4709795

Notary Public, State of New York

Qualified in Chemung County

My Commission Expires July 31, 1994

Learned, Reilly

& Learned

ATTORNEYS at law

301 William Street

Elmira, New York 14902